

REMARKS

In the present application, Claims 1-3 and 6-16 remained pending after Claims 4-5 and 17-19 were withdrawn in response to the restriction requirement. All of the pending claims stand rejected as obvious under 35 U.S.C. § 103 over Brick *et al.*, in view of Miller *et al.* The applicants thank the Examiner for his thorough review of the present application.

As a preliminary matter, it is believed to be a typographical error in the most recent Office Action incorrectly indicating Claim 6 to be withdrawn. The response to the election requirement includes Claim 6 as being among those believed to be within the scope of Species B ("risk determined by micro climate data"). This response assumes that the withdrawal of Claim 6 is a clerical error and, therefore, assumes that Claim 6 remains pending in the present application. If the undersigned has misinterpreted the Examiner's intentions, clarification is respectfully requested. It is requested that the Examiner acknowledge that Claim 6 is not withdrawn from consideration in the present application.

Green Cicer Bean versus Dry Cicer Beans

The difference between the commercial production of green cicer beans, as compared to the commercial production of dry cicer beans, is important to understanding the present invention. The commercial production of dry cicer beans (sometimes the term "chickpeas" is used to refer to dry cicer beans) is known in the U.S. and in many countries around the world, as noted on page 2 of the present application, "Commercial Cicer bean production has heretofore been limited to dry beans, typically harvested at about 10% moisture when, for example, the Kabuli-type bean obtains a yellowish cream color." The commercial production of green cicer beans, however, is a very different undertaking, requiring different agronomic procedures and producing a very different crop from the dry cicer bean.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

As discussed in the present application, when producing green cicer beans it is important to avoid the caramelization of the cicer beans (see p. 7, lines 21 *et seq.*). In (prior art) dry cicer bean production, the cicer beans are allowed to caramelize prior to harvesting. Preventing caramelization is generally not a consideration in dry cicer bean production (see discussion beginning at the top of page 3 of the present application). In contrast, to produce green cicer beans it is important to harvest the product at the appropriate time in a relatively earlier stage of the cicer bean development. It is therefore important in green cicer bean production to select acreage based on the relative risk of caramelization and to time the harvest of the cicer beans to avoid caramelization. These aspects of the present invention are emphasized in all of the pending claims, as amended herein.

Selection of Acreage Based On Relative Risk of Caramelization

None of the prior art of record teaches or suggests "selecting acreage based on relative risk of caramelization for a crop of Cicer beans," as recited in Claim 1 of the present application. The Examiner has cited Brick *et al.* (pp. 2 and 3) for this limitation. The applicants respectfully disagree. Brick *et al.* is directed to the production of dry cicer beans. As noted by Brick *et al.* at p. 2, second paragraph:

High quality garbanzo seed must be large . . . cream colored and free from cracks, splits or seed coat damage to produce a desirable canned product. More than 90% of garbanzos grown in the US are sold for canning, while the remaining are sold for dry packaging or as animal feed.

As discussed above, dry cicer beans are cream colored, as opposed to the green color of the non-caramelized cicer bean. The crop maturation time of 120-140 days (recited at the top of p. 3 of Brick *et al.*) also infers a dry cicer bean crop is contemplated. Brick *et al.* also shows it is applicable to dry cicer beans under the heading "Harvest Procedures" wherein Brick *et al.* notes that, "On-farm threshing and transportation of garbanzo bean are somewhat similar to dry edible

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

beans. . . . Direct harvest requires that the crop be uniformly mature and dry prior to combining."

Elsewhere, Brick *et al.* teaches directly away from the production of green cicer beans, "Plants that are immature or green at the time of cutting will produce dark, discolored and immature green seed. Dark colored seed reduces quality and cannot be easily removed during the conditioning process (Caevari, 1994)." The present application is specifically directed to commercial production of the green cicer bean.

In that same section, Brick *et al.* states that, "The crop should be threshed at approximately 14 to 18% seed moisture." This is a moisture content for a dry cicer bean. It is known in the art that green cicer beans typically have a moisture content of about 80% or greater.

In the commercial production of dry cicer beans, caramelization is not a consideration because dry cicer beans are not harvested until well after caramelization has occurred and the cicer beans have substantially dried out. While the geographical and other parameters described by Brick *et al.* on pp. 2 and 3 may provide guidance for the production of dry cicer beans, it does not disclose or suggest any parameters that are directed to, or preferable for, the production of green cicer beans or, in particular, for avoiding caramelization of the cicer beans.

Therefore, Brick *et al.* does not disclose a method for the commercial production of green cicer beans and does not disclose the selection of acreage based on the relative risk of caramelization--both of which are limitations in all of the pending claims in the present application. (Miller *et al.* also does not disclose these limitations.) The pending claims are therefore believed to be patentable over the prior art of record.

Accumulated Growing Degree Days Between 70 and 110.

In order to expedite examination of the present application, Claim 1 is herein amended to include the limitation from Claim 3, *e.g.*, to recite "harvesting said Cicer beans when said growing degree days reach [a predetermined] an accumulated value between 70 and 110." Claim 3 is canceled.

Support for this amendment can be found on page 11 beginning at line 14, "... the inventors have observed a preferred level of green Cicer bean maturity is present when the growing degree day accumulated value is between 70 and 110." It is believed that this aspect of the invention clarifies and clearly distinguishes over the prior art practice of harvesting dry cicer beans. As discussed above and throughout the present application, the commercial production of green cicer beans is a very different agricultural endeavor from the production of dry cicer beans and produces a very different product.

We note that Miller *et al.* is also directed to the production of dry cicer beans and not to the production of green cicer beans. For example, in the section marked "Introduction," Miller *et al.* describes the Desi chickpea as "pigmented (tan to black)," and the Kabuli chickpea as "white to cream-colored." These are the characteristics of dry cicer beans, wherein green cicer beans are a deep green in color. On page 2, third column, Miller *et al.* expressly mandates less than one-half of one percent green cicer beans in the product, "... producers must manage to meet market specifications for green seed content (L<0.5% to receive U.S. No. 1 grade, USA Dry Pea and Lentil Council)." Miller *et al.* expressly indicates dry cicer beans at p. 7 under "Harvest Methods," where it states, "Monitoring of seed color is most important to determine proper harvest timings and management. Chickpea can be harvested at 18% moisture but requires that the crop ripens uniformly, which is rare in this crop." 18% moisture is a dry cicer bean.

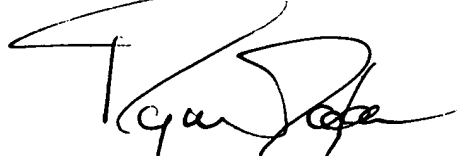
CONCLUSION

Claims 1-3 and 6-16 are pending in the present application. (The undersigned believes that there is a typographical error withdrawing Claim 6 in the Office Action.) All of the cited art are directed to dry cicer bean production rather than the commercial production of green cicer beans, which is the subject of the present application. All of the pending claims recite selecting acreage based on relative risk of caramelization, which is not taught or suggested by any of the prior art of record, and is not relevant to the production of dry cicer beans. To facilitate the present examination, the remaining independent Claim 1 is amended to recite that harvesting is conducted when the growing degree days reach an accumulated value between 70 and 110. This aspect of the invention is also not taught or suggested in the cited art. Claim 3 is herein canceled. The claims are believed to be patentably distinguishable over the prior art. Entry of the amendment and a favorable disposition are respectfully requested.

The Examiner is encouraged to call the undersigned directly if there are any remaining are any remaining resolvable issues related to this application.

Respectfully submitted,

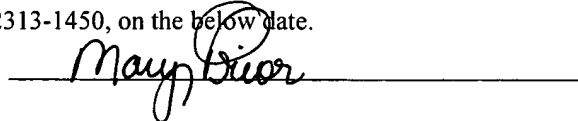
CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Ryan E. Dodge, Jr.
Registration No. 42,492
Direct Dial No. 206.695.1724

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: June 2, 2005



RED:mgp

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100